



APPENDIX.

Section 64 of the Bankruptcy Act, 11 U. S. C. A. 104 (a), (b) (6) (7), reads as follows:

“(a) The Court shall order the trustee to pay all taxes legally due and owing by the bankrupt to the United States, State, county, district, or municipality, in the order of priority as set forth in paragraph (b) hereof: Provided, that no order shall be made for the payment of a tax assessed against real estate of a bankrupt in excess of the value of the interest of the bankrupt estate therein as determined by the Court. Upon filing the receipts of the proper public officers for such payments the trustee shall be credited with the amounts thereof, and in case any question arises as to the amount or legality of any such tax the same shall be heard and determined by the Court.

“(b) The debts to have priority, in advance of the payment of dividends to creditors, and to be paid in full out of bankrupt estates, and the order of payment shall be * * *

“(6) taxes payable under paragraph (a) hereof and

“(7) debts owing to any person who by the laws of the States or the United States is entitled to priority: Provided, that the term ‘person’ as used in this section shall include corporations, the United States and the several States and Territories of the United States.”

Section 347 of Title 28 U. S. C. A. (Judicial Code, Section 240, amended) reads as follows:

“Certiorari to circuit courts of appeals and Court of Appeals of District of Columbia; appeal or writ of error to Supreme Court from circuit courts of appeals in certain cases; other reviews not allowed.

“(a) In any case, civil or criminal, in a circuit court of appeals, or in the Court of Appeals of the District of Columbia, it shall be competent for the Supreme Court of the United States, upon the petition of any party thereto, where Government or other litigant, to require

by certiorari, either before or after a judgment or decree by such lower court, that the cause be certified to the Supreme Court for determination by it with the same power and authority, and with like effect, as if the cause had been brought there by unrestricted writ of error or appeal.

“(b) Any case in a circuit court of appeals where is drawn in question the validity of a statute of any State, on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, and the decision is against its validity, may, at the election of the party relying on such State statute, be taken to the Supreme Court for review on writ of error or appeal; but in that event a review on certiorari shall not be allowed at the instance of such party, and the review on such writ of error or appeal shall be restricted to an examination and decision of the Federal questions presented in the case.

“(c) No judgment or decree of the circuit court of appeals or of the Court of Appeals of the District of Columbia shall be subject to review by the Supreme Court otherwise than as provided in this section.”

Section 903 (a), Social Security Act, 42 U. S. C. A. 1103, reads as follows:

“(a) The Social Security Board shall approve any State law submitted to it, within thirty days of such submission, which is finds provides that—

“(1) All compensation is to be paid through public employment offices in the State or such other agencies as the Board may approve;

“(2) No compensation shall be payable with respect to any day of unemployment occurring within two years after the first day of the first period with respect to which contributions are required;

“(3) All money received in the unemployment fund shall immediately upon such receipt be paid over to the Secretary of the Treasury to the credit of the Unemployment Trust Fund established by section 904;

"(4) All money withdrawn from the Unemployment Trust Fund by the State agency shall be used solely in the payment of compensation exclusive of expenses of administration;

"(5) Compensation shall not be denied in such State to any otherwise eligible individual for refusing to accept new work under any of the following conditions: (A) If the position offered is vacant due directly to a strike, lockout, or other labor dispute; (B) if the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality; (C) if as a condition of being employed the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization;

"(6) All the rights, privileges, or immunities conferred by such law or by acts done pursuant thereto shall exist subject to the power of the legislature to amend or repeal such law at any time. * * *"

Section 6 (B) of the Missouri Unemployment Compensation Law (Laws of Missouri, 1937, p. 585) reads:

"Each employer shall pay contributions equal to the following percentages of wages payable by him with respect to employment:

- (1) One and eight-tenths per centum with respect to employment during the calendar year 1937;
- (2) Two and seven-tenths per centum with respect to employment during the calendar years 1938, 1939, 1940 and 1941.
- (3) With respect to employment after December 31, 1941, the percentage determined pursuant to subsection (c) of this section."

Section 6 (C) (d) of the Missouri Unemployment Compensation Law (Laws of Missouri, 1937, p. 587) reads:

"If the total amount of contributions required to be made under this Act by any employer for any period ending on December 31st of any calendar year based on wages paid

by all employment units of such employer within this state, plus any credits allowed such employer under the provisions of Section 6 (C) (3) (b), shall not equal 90 per cent of the tax under Title IX of the Social Security Act, levied against such employer based on wages paid by all the employing units of such employer within this state for the same calendar year ending December 31st., then such employer shall make an additional contribution equal to the difference between said 90 per cent of said tax levied under said Social Security Act and the total amount of contributions required to be made under this Act."

Section 12 (a) of the Missouri Unemployment Compensation Law (Laws of Missouri, 1937, p. 595) reads as follows:

"(a) There is hereby established as a special fund, separate and apart from all public moneys or funds of this state, an unemployment compensation fund, which shall be administered by the commission exclusively for the purposes of this Act. This fund shall consist of:

"(1) All contributions collected under this Act, together with any interest thereon collected pursuant to section 15 of this Act;

"(2) interest earned upon any moneys in the fund;

"(3) any property or securities acquired through the use of moneys belonging to the fund;

"(4) all earnings of such property or securities;

"(5) all voluntary contributions permitted under this Act; and

"(6) all funds set aside or appropriated by the Congress of the United States or the United States Social Security Board to be deposited to the fund.

"All moneys in the fund shall be mingled and undivided."

Section 15 (b) of the Missouri Unemployment Compensation Law (Laws of Missouri, 1937, p. 599), reads as follows:

"(b) If, after due notice, any employer defaults in any payment of contributions or interest thereon, the amount

due shall be collected by civil action in the name of the commission, and the employer adjudged in default shall pay the costs of such action. Civil action brought under this section to collect contributions or interest thereon from an employer shall be heard by the court at the earliest possible date and shall be entitled to preference upon the calendar of the court over all other civil actions except petitions for judicial review under this Act and cases arising under the workmen's compensation law of this state."

Section 15 (h) of the Missouri Unemployment Compensation Law, as amended in 1939, (Laws of Missouri, 1939, p. 925), reads as follows:

"If any employer defaults in the payment of contributions or interest thereon, the amount due shall be collected by civil action in the name of the three Commissioners administering this Act as members of the Commission. In the event of the death, removal, resignation or expiration of the term of any Commissioner resulting in a change of personnel of the Commission, the successor or successors shall be substituted as parties plaintiff on motion of counsel. Such suit shall be brought in the county wherein the employer resides or has a place of business or agent for the transaction of business in this state or where he or it may be found, and the employer adjudged in default shall pay the cost of such action. Any civil action brought under this Act shall be heard by the court at the earliest possible date and shall be entitled to preference on the calendar of the court over all other civil actions except petitions for judicial review under this Act and cases arising under the Workmen's Compensation Law of this state. If any employer shall fail to resort to the remedy herein provided for reassessment of any contributions, interest or penalty within the time as provided herein, such employer shall thereafter be precluded from asserting any defense in a direct suit for the collection of the contributions."

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION.

In the Matter of

LECHTMAN PRINTING COM-
PANY, a corporation, *Debtor*.

} *In Bankruptcy*
No. 15,358.

**MEMORANDUM AND ORDER ON PETITION TO
REVIEW ORDER OF REFEREE.**

We think the order of the referee here sought to be reviewed was the right order. We state our reasons for those conclusions.

1. Under the Chandler Act, as well as the Bankruptcy Act of 1938, governmental entities to which taxes are owing are entitled to priority as to taxes over creditors for general claims. What was paid the Unemployment Compensation Commission of Missouri was the payment of a tax obligation. *Carmichael v. Coal & Coke Co.*, 301 U. S. 495.

2. Whether the obligation was a tax obligation, undoubtedly it was a debt to a person who, by the Bankruptcy Act of 1898, was entitled to priority over general creditors. So much, in effect, was conceded at the argument of the petition to review by learned counsel for the trustee.

It was substantially conceded also by learned counsel that the order made by the referee directing the trustee to pay the claim of the Unemployment Compensation Commission was, when it was made, a lawful order. The order was made August 13, 1938.

The Chandler Act became effective, by its terms, on September 22, 1938. It provided (or a contemporaneous act applicable to the Chandler Act provided)—

“Except as otherwise provided in this amendatory act, the provisions of this amendatory act shall govern proceedings, so far as practicable, in cases pending when it takes effect.”

It seems very clear to us that the proper interpretation of the language quoted is this: as to questions in pending cases which have not been decided when the Chandler Act

becomes effective (i. e. September 22, 1938), those questions shall be decided in accordance with the provisions of the Chandler Act so far as practicable.

But the question of whether the payment of the Unemployment Compensation Commission's claim, as a claim entitled to priority, should be made or not made, was presented to the referee and decided by the referee on August 13, 1938. That was a question which did not arise after September 22, 1938, in the sense contemplated by Congress when it provided that the Chandler Act "*shall* govern proceedings, so far as practicable, in cases pending when it takes effect."

ORDER.

The order of the referee is confirmed and approved.
IT IS SO ORDERED.

District Judge.

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